

109TH CONGRESS  
1ST SESSION

# H. R. 3698

To provide temporary Medicaid disaster relief in response to Hurricane Katrina, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 8, 2005

Mr. DINGELL (for himself, Mr. JEFFERSON, Mr. DAVIS of Alabama, Mr. THOMPSON of Mississippi, Ms. PELOSI, Mrs. CAPPS, Mr. BROWN of Ohio, Mr. WAXMAN, Mr. STARK, Mr. RANGEL, Mr. GENE GREEN of Texas, and Mr. MELANCON) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide temporary Medicaid disaster relief in response to Hurricane Katrina, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION. 1. SHORT TITLE; PURPOSE.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Temporary Medicaid Disaster Relief Act of 2005”.

6       (b) PURPOSE.—The purpose of this Act is to ensure  
7       all those affected by Hurricane Katrina have access to

1 health coverage and medical care through the medicaid  
 2 program and to authorize temporary changes in such pro-  
 3 gram to guarantee and expedite that coverage and access  
 4 to care.

5 **SEC. 2. DISASTER RELIEF PERIOD.**

6 For purposes of this Act, the term “disaster relief  
 7 period” means the period beginning on August 29, 2005,  
 8 and ending on September 30, 2006.

9 **SEC. 3. TEMPORARY MEDICAID COVERAGE FOR KATRINA**  
 10 **SURVIVORS.**

11 (a) DEFINITIONS.—In this Act:

12 (1) KATRINA SURVIVOR.—

13 (A) IN GENERAL.—The term “Katrina  
 14 Survivor” means an individual who is described  
 15 in subparagraph (B) or (C).

16 (B) RESIDENTS OF DISASTER LOCAL-  
 17 ITIES.—

18 (i) IN GENERAL.—An individual who,  
 19 on any day during the week preceding the  
 20 declaration of a public health emergency  
 21 on August 29, 2005, had a residence in—

22 (I) a parish in the State of Lou-  
 23 isiana that is among the parishes that  
 24 the Federal Emergency Management  
 25 Agency of the Emergency Prepared-

1                   ness and Response Directorate of the  
2                   Department of Homeland Security de-  
3                   clared on September 4, 2005, to be  
4                   Federal Disaster Parishes; or

5                   (II) a county in the State of Ala-  
6                   bama or Mississippi that is among the  
7                   counties such Agency declared Federal  
8                   Disaster Counties on September 4,  
9                   2005.

10                  (ii) AUTHORITY TO RELY ON WEBSITE  
11                  POSTED DESIGNATIONS.—The Secretary of  
12                  Health and Human Services shall post on  
13                  the Internet website for the Centers for  
14                  Medicare & Medicaid Services a list of par-  
15                  ishes and counties identified as Federal  
16                  Disaster Parishes or Counties. Any State  
17                  which provides medical assistance to  
18                  Katrina Survivors on the basis of such  
19                  posting and in accordance with this Act  
20                  shall be held harmless if it is subsequently  
21                  determined that the provision of such as-  
22                  sistance was in error.

23                  (C) INDIVIDUALS WHO LOST EMPLOY-  
24                  MENT.—An individual who, on any day during  
25                  the week preceding the declaration of a public

1 health emergency on August 29, 2005, had a  
2 residence in a direct impact State and lost their  
3 employment since Hurricane Katrina.

4 (D) CONSTRUCTION.—A Katrina Survivor  
5 shall be treated as being “from” the State of  
6 residence described in subparagraph (B)(i) or  
7 (C), as the case may be.

8 (E) TREATMENT OF CURRENT MEDICAID  
9 BENEFICIARIES.—Nothing in this Act shall be  
10 construed as preventing an individual who is  
11 otherwise entitled to medical assistance under  
12 title XIX of the Social Security Act from being  
13 treated as a Katrina Survivor under this Act.

14 (F) TREATMENT OF HOMELESS PER-  
15 SONS.—For purposes of this Act, in the case of  
16 an individual who was homeless on any day  
17 during the week described in subparagraph  
18 (B)(i), the individual’s “residence” shall be  
19 deemed to be the place of residence as other-  
20 wise determined for such an individual under  
21 title XIX of the Social Security Act.

22 (2) DIRECT IMPACT STATE.—The term “direct  
23 impact State” means the State of Louisiana, Ala-  
24 bama, and Mississippi.

1       (b) RULES FOR PROVIDING TEMPORARY MEDICAL  
2 ASSISTANCE TO KATRINA SURVIVORS.—During the dis-  
3 aster relief period, any State may provide medical assist-  
4 ance to Katrina Survivors under a State medicaid plan  
5 established under title XIX of the Social Security Act in  
6 accordance with the following:

7           (1) UNIFORM ELIGIBILITY RULES.—

8           (A) NO INCOME, RESOURCES, RESIDENCY,  
9 OR CATEGORICAL ELIGIBILITY REQUIRE-  
10 MENTS.—Such assistance shall be provided  
11 without application of any income or resources  
12 test, State residency, or categorical eligibility  
13 requirements.

14          (B) STREAMLINED ELIGIBILITY PROCE-  
15 DURES.—The State shall use the following  
16 streamlined procedures in processing applica-  
17 tions and determining eligibility for medical as-  
18 sistance for Katrina Survivors:

19           (i) A common 1-page application form  
20 developed by the Secretary of Health and  
21 Human Services in consultation with the  
22 National Association of State Medicaid Di-  
23 rectors. Such form shall include notice re-  
24 garding the penalties for making a fraudu-  
25 lent application under paragraph (4) and

1 shall require the applicant to assign to the  
2 State any rights of the applicant (or any  
3 other person who is a Katrina Survivor  
4 and on whose behalf the applicant has the  
5 legal authority to execute an assignment of  
6 such rights) under any group health plan  
7 or other third-party coverage for health  
8 care.

9 (ii) Self-attestation by the applicant  
10 that the applicant is a Katrina Survivor.

11 (iii) No requirement for documenta-  
12 tion evidencing the basis on which the ap-  
13 plicant qualifies to be a Katrina Survivor.

14 (iv) Issuance of a Medicaid eligibility  
15 card to an applicant who completes such  
16 application, including the self-attestation  
17 required under clause (ii). Such card shall  
18 be valid during the disaster relief period.

19 (v) If an applicant completes the ap-  
20 plication and presents it to a provider or  
21 facility participating in the State medicaid  
22 plan that is qualified to make presumptive  
23 eligibility determinations under such plan  
24 (which at a minimum shall consist of facili-  
25 ties identified in section 1902(a)(55) of the

1           Social Security Act (42 U.S.C.  
2           1396a(a)(55)) and it appears to the pro-  
3           vider that the applicant is a Katrina Sur-  
4           vivor based on the information in the ap-  
5           plication, the applicant will be deemed to  
6           be a Katrina Survivor eligible for medical  
7           assistance in accordance with this section,  
8           subject to paragraph (3).

9           (vi) Continuous eligibility, without the  
10          need for any redetermination of eligibility,  
11          for the duration of the disaster relief pe-  
12          riod.

13          (C) DETERMINATION OF ELIGIBILITY FOR  
14          COVERAGE AFTER THE TERMINATION OF THE  
15          DISASTER RELIEF PERIOD.—In the case of a  
16          Katrina Survivor who is receiving medical as-  
17          sistance from a State, prior to the termination  
18          of the disaster relief period, the State providing  
19          such assistance shall determine whether the  
20          Katrina Survivor is eligible for continued med-  
21          ical assistance under the State’s eligibility rules  
22          otherwise applicable under the State medicaid  
23          plan. If a State determines that the individual  
24          is so eligible, the State shall provide the indi-  
25          vidual with written notice of the determination

1 and provide the individual with continued cov-  
2 erage for such medical assistance for so long as  
3 the individual remains eligible under such oth-  
4 erwise applicable eligibility rules. If a State de-  
5 termines that the individual is not so eligible,  
6 the State shall provide the individual with writ-  
7 ten notice of the determination, including the  
8 reasons for such determination.

9 (2) SCOPE OF COVERAGE SAME AS CATEGORI-  
10 CALLY NEEDY.—The State shall treat Katrina Sur-  
11 vivors as individuals eligible for medical assistance  
12 under the State plan under title XIX of the Social  
13 Security Act on the basis of section  
14 1902(a)(10)(A)(i) of the Social Security Act (42  
15 U.S.C. 1396a(a)(10)(A)(i)), with coverage for such  
16 assistance retroactive to August 29, 2005.

17 (3) VERIFICATION OF STATUS AS A KATRINA  
18 SURVIVOR.—

19 (A) IN GENERAL.—The State shall make a  
20 good faith effort to verify the status of a  
21 Katrina Survivor enrolled in the State Medicaid  
22 plan under the provisions of this section after  
23 the determination of the eligibility of the Sur-  
24 vivor for medical assistance under such plan.

(B) EVIDENCE OF VERIFICATION.—A

State may satisfy the verification requirement under subparagraph (A) with respect to a Katrina Survivor by showing that the State providing medical assistance obtained information from the Social Security Administration, the Internal Revenue Service, or the State Medicaid Agency of the direct impact State.

(C) DISALLOWANCE OF PAYMENTS FOR

FAILURE TO MAKE GOOD FAITH EFFORT.—If, with respect to the status of a Katrina Survivor enrolled in a State Medicaid plan, the State fails to make the good faith effort required under subparagraph (A), and the Secretary determines that the individual so enrolled is not a Katrina Survivor, the Secretary shall disallow all Federal payments made to the State that are directly attributable to medical assistance provided or administrative costs incurred with respect to the individual during the disaster relief period.

(4) PENALTY FOR FRAUDULENT APPLICATIONS.—

(A) INDIVIDUAL LIABLE FOR COSTS.—If a

State, as the result of verification activities con-

1           ducted under paragraph (3), determines after a  
2           fair hearing that an individual has knowingly  
3           made a false self-attestation described in para-  
4           graph (1)(B)(ii), the State may, subject to sub-  
5           paragraph (B), seek recovery from the indi-  
6           vidual for the full amount of the cost of medical  
7           assistance provided to the individual under this  
8           section.

9           (B) EXCEPTION.—The Secretary shall ex-  
10          empt a State from seeking recovery under sub-  
11          paragraph (A) if the Secretary determines that  
12          it would not be cost-effective for the State to do  
13          so.

14          (C) REIMBURSEMENT TO THE FEDERAL  
15          GOVERNMENT.—Any amounts recovered by a  
16          State in accordance with this paragraph shall  
17          be returned to the Federal government, except  
18          that a State's administrative costs attributable  
19          to obtaining such recovery shall be reimbursed  
20          by the Federal government in accordance with  
21          section 4(a)(2).

22          (5) EXEMPTION FROM ERROR RATE PEN-  
23          ALTIES.—All payments attributable to providing  
24          medical assistance to Katrina Survivors in accord-

1       ance with this section shall be disregarded for pur-  
2       poses of section 1903(u) of the Social Security Act.

3   **SEC. 4. TEMPORARY DISASTER RELIEF FOR STATES UNDER**  
4       **MEDICAID.**

5       (a) INCREASE IN FEDERAL MATCHING RATE.—

6           (1) 100 PERCENT FMAP FOR MEDICAL ASSIST-  
7       ANCE.—Notwithstanding section 1905(b) of the So-  
8       cial Security Act (42 U.S.C. 1396d(b)), the Federal  
9       medical assistance percentage for providing medical  
10      assistance under a State medicaid plan under title  
11      XIX of such Act to Katrina Survivors or, in the case  
12      of a direct impact State, to any individual who is  
13      provided medical assistance under the State med-  
14      icaid plan during the disaster relief period, shall be  
15      100 percent.

16          (2) 100 PERCENT FEDERAL MATCH FOR CER-  
17      TAIN ADMINISTRATIVE COSTS.—Notwithstanding  
18      paragraph (7) of section 1903(a) of such Act (42  
19      U.S.C. 1396b(a)), or any other paragraph of such  
20      section, the Federal matching rate for costs directly  
21      attributable to all administrative activities that re-  
22      late to the enrollment of Katrina Survivors under  
23      section 3 in a State medicaid plan, verification of  
24      the status of such Survivors, processing of claims for  
25      payment for medical assistance provided to such

1 Survivors under such section, and recovery costs  
2 under section 3(b)(4)(C), shall be 100 percent. The  
3 Secretary shall issue guidance not later 30 days  
4 after the date of enactment of this Act on the imple-  
5 mentation of this paragraph.

6 (b) LIMITATION ON REDUCTION OF FMAP FOR FIS-  
7 CAL YEAR 2006 FOR ANY STATE.—If the Federal medical  
8 assistance percentage (as defined in section 1905(b) of the  
9 Social Security Act) determined for a State for fiscal year  
10 2006 is less than the Federal medical assistance percent-  
11 age determined for the State for fiscal year 2005, the Fed-  
12 eral medical assistance percentage for the State for fiscal  
13 year 2005 shall apply to the State for fiscal year 2006  
14 only for purposes of title XIX of the Social Security Act.

15 (c) TEMPORARY SUSPENSION OF MEDICARE  
16 “CLAWBACK” AND POSTPONEMENT OF CUT-OFF OF  
17 MEDICAID PRESCRIPTION DRUG FUNDING IN AFFECTED  
18 STATES.—

19 (1) SUSPENSION IN APPLICATION OF  
20 “CLAWBACK”.—Section 1935(c) of the Social Secu-  
21 rity Act (42 U.S.C. 1396u–5(c)) shall not apply,  
22 subject to paragraph (3), before January 2007 to a  
23 direct impact State or to a State that experiences a  
24 significant influx of Katrina Survivors.

1           (2) CONTINUATION OF MEDICAID DRUG COV-  
2       ERAGE FOR DUAL ELIGIBLES.—Section 1935(d)(1)  
3       of such Act shall also not apply, subject to para-  
4       graph (3), before January 2007 to a part D eligible  
5       individual who is a Katrina Survivor.

6           (3) TERMINATION OF APPLICATION OF SUB-  
7       SECTION.—Paragraphs (1) and (2) shall no longer  
8       apply to a State or a Katrina Survivor, respectively,  
9       if the Secretary determines, after consultation with  
10      the State, that enrollment of all part D eligible indi-  
11      viduals in the State under part D of title XVIII of  
12      the Social Security Act who are described in section  
13      1935(c)(6)(A)(ii) of such Act can be achieved with-  
14      out a discontinuation in prescription drug coverage  
15      for any such individual.

16          (4) DEFINITION.—For purposes of this sub-  
17      section, the term “State that experiences a signifi-  
18      cant influx of Katrina Survivors” means those  
19      States, including Arkansas, Florida, Oklahoma, and  
20      Texas, that the Secretary of Health and Human  
21      Services identifies as having a significant in-migra-  
22      tion of Katrina Survivors.

1 **SEC. 5. ACCOMMODATION OF SPECIAL NEEDS OF KATRINA**  
2 **SURVIVORS UNDER MEDICARE PROGRAM.**

3 (a) EXCLUSION OF DISASTER RELIEF PERIOD IN  
4 COMPUTING PART B LATE ENROLLMENT PENALTY.—In  
5 applying the first sentence of section 1839(b) of the Social  
6 Security Act (42 U.S.C. 1395r(b)) in the case of a Katrina  
7 Survivor, there shall not be taken into account any month  
8 any part of which is within the disaster relief period or  
9 within the 2-month period following the end of such dis-  
10 aster relief period.

11 (b) PART D.—

12 (1) EXTENSION OF INITIAL ENROLLMENT PE-  
13 RIOD.—In the case of a Katrina Survivor, the initial  
14 enrollment period under section 1860D–1(b)(2) of  
15 the Social Security Act (42 U.S.C. 1395w–  
16 101(b)(2)) shall in no case end before May 15,  
17 2007.

18 (2) FLEXIBILITY IN DOCUMENTATION FOR  
19 LOW-INCOME SUBSIDIES.—For purposes of carrying  
20 out section 1860D–14 of the Social Security Act (42  
21 U.S.C. 1395w–114), with respect to Katrina Sur-  
22 vivors, the Secretary of Health and Human Services  
23 shall establish documentation rules for Katrina Sur-  
24 vivors which take into account the loss and unavail-  
25 ability of documents due to Hurricane Katrina.

